

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 22129 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ? **-No.**
- 2 To be referred to the Reporter or not ? **-No.**
- 3 Whether their Lordships wish to see the fair copy
of the judgment ? **-No.**
- Whether this case involves a substantial question
of law as to the interpretation of the
4 constitution of India, 1950 or any order made
thereunder ? **-No.**
- 5 Whether it is to be circulated to the civil judge
? **-No.**
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VASIMKHAN @ BABLU YUSUFKHAN PATHAN - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 13/12/2005

ORAL JUDGMENT

1.Vasimkhan @ Bablu Yusufkhan Pathan, petitioner has
filed this habeas corpus petition under Article 226 of
the Constitution of India for quashing and setting

aside the order of detention dated 24/8/2005 passed by the Police Commissioner, Vadodara Petition was filed on 8/11/2005. On 14/11/2005, this Court (Coram:K.M.Mehta, J.) has issued rule which is returnable on 12/12/2005. Hence, matter has been placed for final hearing to this Court.

2.The learned advocate for the petitioner has invited my attention to the order of detention dated 24/8/2005 passed by the Police Commissioner, Vadodara. It has been stated that though order has been passed on 24/8/2005, petitioner has been detained on 27/9/2005 and sent in District Jail, Jamnagar. The learned counsel has invited my attention to the grounds supplied by the detaining authority and in the grounds, it is stated that petitioner has committed five offences which are as under:

1. Offence registered at Sayajiganj Police Station in connection with Criminal Case No.138 of 2005 dated 26/5/2005 under the provisions of Section 397 and 114 of IPC by which he has committed theft of Hero Honda Motor Cycle valued at Rs.30,000/-.

2. Offence registered at J.P.Road Police Station in

connection with Criminal Case No.247 of 2005 dated 25/6/2005 under the provisions of Section 397 and 114 of IPC by which he has committed theft of Hero Honda Splender Motor Cycle valued at Rs.25,000/-.

3. Offence registered at Sayajiganj Police Station in connection with Criminal Case No.170 of 2005 dated 21/6/2005 under the provisions of Section 397 and 114 of IPC by which he has committed theft of Hero Honda Splender Motor Cycle valued at Rs.30,000/-.

4. Offence registered at Fatehganj Police Station in connection with Criminal Case No.204 of 2005 dated 10/7/2005 under the provisions of Section 397 and 114 of IPC by which he has committed theft of Hero Honda Splender Motor Cycle valued at Rs.25,000/-.

5. Offence registered at Sayajiganj Police Station in connection with Criminal Case No.193 of 2005 dated 19/7/2005 under the provisions of Section 397 and 114 of IPC by which he has committed theft of Hero Honda Splender Motor Cycle valued at Rs.25,000/-.

3.It was alleged that petitioner was falling within the

meaning of 'dangerous person' under the provisions of PASA Act and therefore, there is a breach of public order. Statement of one witness under Section 9(2) of the PASA Act was also recorded in this behalf.

4. On behalf of the petitioner, the learned advocate for the petitioner stated that on the basis of grounds of detention, the authority could not have passed the detention order and the order of detention is bad in law as there is only breach of law and order situation but not public order. For the same, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram: M.R. Calla and R.R. Tripathi, J.J.) in L.P.A. No. 223 of 2000 in S.C.A. No. 554 of 2000 and judgment of the Division Bench of this Court (Coram: C.K. Thakkar and K.M. Mehta, J.J.) in the case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816.

5. On behalf of respondent, Mr. L.R. Pujari, learned APP appears. He has supported the order of detention on the basis of grounds stated in the order of detention and he has also filed affidavit in reply of Deepak

Swaroop in this behalf. In the affidavit, it is stated that the authority has passed the order on the basis of relevant material and grounds of detention are legal and valid.

6.I have considered relevant materials in this behalf. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana and another division bench judgment of this Court (C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7.Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the

detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of the Division Bench of this Court in the case of Ashokbhai Jivrajbhai (supra) and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9.In the result, petition is allowed. I hereby quash and set aside the order of detention. Vasimkhan @ Bablu Yusufkhan Pathan, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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